



REQUEST FOR IMPASSE DETERMINATION/ APPOINTMENT OF MEDIATOR

DO NOT WRITE IN THIS SPACE: Case No.:

Date Filed:

INSTRUCTIONS: A request for impasse determination must be filed with the appropriate regional office (see PERB Regulation 32075). A request which is not jointly filed must be served on the other party as required by Regulation 32792(b). Proof of service must accompany the request. Attach additional sheets if more space is required.

1. The employer of the employees in the established unit is an employer within the meaning of the :

- Educational Employment Relations Act (EERA) (Gov. Code, §§ 3540-3549.3).
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, §§ 3560-3599).
- Ralph C. Dills Act (Dills Act) (Gov. Code, §§ 3512-3524).

1. EMPLOYER

Name: Jorge A. Aguilar
 Address: 5735 47th Avenue
 Sacramento, CA 95824
Agent to be contacted:
 Name: Dulcinea Grantham
 Title: Attorney
 Agency/Firm: Lozano Smith
 Address: 2001 N. Main St., Suite 500
 Walnut Creek, CA 94596
 Telephone: 925-953-1620
 E-mail Address: dgrantham@lozanosmith.com

2. EXCLUSIVE REPRESENTATIVE

Name: Sacramento City Teachers Association
 Address: 5300 Elvas Ave
 Sacramento, CA 95819
Agent to be contacted:
 Name: David Fisher
 Title: SCTA President
 Union/Firm: Sacramento City Teachers Association
 Address: 5300 Elvas Ave
 Sacramento, CA 95819
 Telephone: (916) 452-4591
 E-mail Address: dfisher@saccityta.com

4. DESCRIPTION OF ESTABLISHED UNIT

Shall include: Teachers; Teachers of summer school; counselors; psychologists; school social workers; librarians, except the District librarian; audiometrists; nurses; vocational specialists; department chairpersons; speech and language specialists; program specialists; resource specialists; student activities advisers; training specialists; and substitute teachers.

Shall Exclude:

5. APPROXIMATE NUMBER OF EMPLOYEES IN THE UNIT:
2600

6. DATE EXCLUSIVE REPRESENTATIVE WAS RECOGNIZED OR CERTIFIED:

7. TYPE OF DISPUTE

- Initial Contract Successor Contract Reopener(s) in Existing Contract Effects of Layoff
 Other (describe)

8. PUBLIC NOTICE REQUIREMENTS

Date exclusive representative's initial proposals presented to the public: February 7, 2019
 Date employer's initial proposals presented to the public: November 15, 2018

Los Angeles Regional Office
 425 W. Broadway, Suite 400
 Glendale, CA 91204
 (818) 551-2822

Sacramento Regional Office
 1031 18th Street Sacramento,
 CA 95811-4174
 (916) 322-3198

San Francisco Regional Office
 1330 Broadway, Suite 1532
 Oakland, CA 94612-2514
 (510) 622-1016

9. HISTORY OF NEGOTIATIONS/MEET AND CONFER

Date of first negotiations session: **See Attached.**

Approximate total number of hours spent in negotiations to date: **See Attached.**

Total number of negotiating sessions to date: **See Attached.**

10. STATUS OF NEGOTIATIONS/MEET AND CONFER

Date impasse was declared by a party/parties pursuant to PERB Regulation 32792(a): **December 19, 2019**

Total number of unresolved issues which remain in dispute:

10

Number of issues on which the parties have reached tentative agreement: **None.**

Issues which remain in dispute:

Articles 5, 6, 8, 11, 12, 13, 17, 18, 21, and School Calendar (2020-21 and 2021-22)

Issues on which tentative agreement has been reached:

None.

11. STATEMENT OF FACTS

Provide a clear and concise description of the negotiations which have occurred, including the extent to which the parties have made counter-proposals and have discussed the issues which remain in dispute. Identify the facts which indicate that future meetings without the assistance of a mediator would be futile.

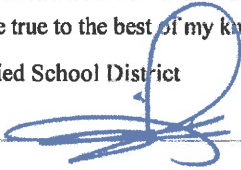
See Attached.

DECLARATION

I declare under penalty of perjury that the statements herein are true to the best of my knowledge and belief.

NAME OF REQUESTING PARTY: **Sacramento City Unified School District**

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____



Title: **Superintendent**

Date: **1/13/20**

NAME OF REQUESTING PARTY:

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

Title:

Date:

(Attach a completed Proof of Service form.)

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Contra Costa, State of CA. I am over the age of 18 years. The name and address of my residence or business is 2001 N. Main St., Suite 500 Walnut Creek, CA 94596

On January 13, 2020, I served the Request for Impasse Determination/ Appointment of Mediator
(Date) (Description of document(s))
(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check the applicable method or methods):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

personal delivery;

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

David Fisher SCTA President Sacramento City Teachers Association 5300 Elvas Ave Sacramento, CA Fax: (916) 452-4675	Public Employment Relations Board 1031 18th Street Sacramento, CA 95811-4174
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 13, 2020, at Walnut Creek CA.
(Date) (City) (State)

Vanessa Bonite
(Type or print name)

Vanessa Bonite
(Signature)

ADDENDUM TO SACRAMENTO CITY UNIFIED SCHOOL DISTRICT'S REQUEST FOR
IMPASSE ON 2019-20 SUCCESSOR CONTRACT NEGOTIATIONS WITH THE
SACRAMENTO CITY TEACHERS ASSOCIATION

This serves as the Sacramento City Unified School District's ("District") Addendum to PERB Form 1510, Request for Impasse Determination/Appointment of Mediator ("Request"). The District submits this Addendum in support of its Request to provide the Public Employment Relations Board ("PERB") with additional and necessary information to allow PERB to make a determination as to whether the District and the Sacramento City Teachers Association ("SCTA") are at an impasse in negotiations for a successor collective bargaining agreement ("CBA" or "contract").

The CBA between the District and SCTA expired as of July 1, 2019. After a very lengthy and contentious round of bargaining for the 2016-19 CBA, which lasted nearly eighteen months, and nearly culminated with a teachers' strike before a Tentative Agreement was reached in December 2017, the District determined to sunshine its proposals for the next contract well in advance of the June 30, 2019 expiration date. On November 15, 2018, the District "sunshined" or submitted its initial proposals to SCTA for bargaining. The District's initial proposal included the articles that it planned to make proposals in and a general description of the District's interests in those articles. The District then invited SCTA to begin bargaining.

SCTA responded to the District's invitation to begin negotiations by stating that the District should implement the 2018-19 restructured salary schedule and engage in discussions over health plan changes. SCTA then noted that under Article 25 of the CBA, SCTA has until the first Board meeting in February to sunshine proposals and that SCTA has "every intention of abiding by Article 25" and "'look[s] forward to scheduling dates after we submit our initial contract proposals as set forth above.'" Unfortunately, SCTA did not abide by Article 25. While SCTA did submit its sunshine proposal in February as permitted under Article 25, it did not comply with the remainder of Article 25, which requires the parties to "enter into negotiations of a successor Agreement no later than one hundred and twenty (120) days prior to the expiration of this Agreement." Rather, as described below, SCTA developed a myriad of reasons as to why it could not begin bargaining with the District. And as of now, SCTA has not agreed to begin bargaining with the District on a successor contract and the District faces a significant budget deficit, which many of the District's negotiations proposals presented to SCTA to date propose to address.

The District sunshined articles for the 2019-20 successor contract negotiations in November 2018 and has requested that SCTA agree to begin negotiations 18 times since.

Between November 9, 2018 and December 20, 2019, a span of thirteen months, the District sent SCTA eighteen (18) letters requesting that SCTA begin negotiations with the District on a 2019-20 successor Collective Bargaining Agreement. In total, the District offered seventy-one (71) dates to SCTA for negotiations through these eighteen letters. The following is a summary of the District's correspondence to SCTA requesting to begin negotiations. (See commencing

negotiations letters dated between November 9, 2018 and December 20, 2019 attached hereto and incorporated herein as Exhibit A.)

<u>DATE</u>	<u>CORRESPONDENCE</u>
November 9, 2018	Letter to SCTA re: Health Plan Savings Dates Offered: November 29, December 5, and December 11, 2018
December 11, 2018	Letter to SCTA re: successor contract negotiations Dates Offered: December 18, 20, 2019, January 9, 2019
December 21, 2018	Letter to SCTA re: First Negotiation Session Dates Offered: February 11, 13, 15, 2019
January 17, 2019	Letter to SCTA re: First Negotiations Session Dates Offered: January 28, 30, 31, and February 1, 2019
February 15, 2019	Letter to SCTA re: Commencing Negotiation on Successor (2019-2022) Contract Dates Offered: February 20, 22, 25, 26, 27, 28, and March 1, 2019
March 4, 2019	Letter to SCTA re: Commencing Negotiation on Successor (2019-2022) Contract Dates Offered: March 11, 12, 13, and 15, 2019
March 23, 2019	Letter to SCTA to Discuss Alleged Unfair Practices and Commencing Successor Contract Negotiations Dates Offered: None
May 21, 2019	Letter to SCTA re: Looking Forward: Commencing Negotiations on Successor (2019-2020) Contract Dates Offered: May 28, June 4, 6, 10, 11, and 13, 2019
June 3, 2019	Letter to SCTA re: Health Plan Savings Dates Offered: June 10, 11, and 13, 2019
June 13, 2019	Letter to SCTA re: State Superintendent Meeting and LMI Dates Offered: June 18, 25, and 26, 2019
June 20, 2019	Letter to SCTA re: Commencing Negotiations Dates Offered: July 9, 10, and 11, 2019
August 2, 2019	Letter to SCTA re: Initial Negotiations Proposal Dates Offered: August 6, 7, 12, 13, 19, 20, 22, and 27, 2019
August 13, 2019	Letter to SCTA re: Commencing Negotiations for 2019-20 Successor Contract Dates Offered: August 19, 20, 22, and 27, 2019
August 16, 2019	Letter to SCTA re: Commencing Negotiations for 2019-20 Successor Contract Dates Offered: August 22, 2019 (reiterated)
August 23, 2019	Letter to SCTA re: Commencing Negotiations Dates Offered: September 3, 4, and 6, 2019
October 3, 2019	Letter to SCTA re: Commencing Negotiations for 2019-20 Successor Collective Bargaining Agreement Dates Offered: October 9, 11, 14, 15, 16, 2019
December 9, 2019	Letter to SCTA re: Commencing Negotiations for 2019-20 Successor Collective Bargaining Agreement Dates Offered: December 16, 18, 20, 2019

December 20, 2019	Letter to SCTA re: Commencing Negotiations for 2019-20 Successor Collective Bargaining Agreement Dates Offered: January 14, 15,16, 24, 28, 29, 30, 31, 2020
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Beginning on August 2, 2019, and in light of SCTA’s continued refusal to begin negotiations with the District, and/or SCTA’s conditioning negotiations on resolution of other items as evidenced in various letters from SCTA to the District, the District began presenting its proposals for bargaining to SCTA electronically. Between August 2, 2019 and December 9, 2019, the District submitted to SCTA all of its proposals on the articles of the CBA that the District had sunshined in November 2018. Each proposal presented to SCTA showed the changes that the District proposed to make to that article by using strike out and underlined text. Below is a summary of the proposals submitted to SCTA and the dates on which they were presented.

Proposals presented to SCTA on August 2, 2019

- Negotiations Ground Rules
- Health Benefits – Article 13
- 2020-21 and 2021-22 School Calendar

Proposals presented to SCTA on August 23, 2019

- Organizational Rights – Article 18
- Organizational Security – Article 21

Proposals presented to SCTA on October 2, 2019

- Safety Conditions – Article 11

Proposals presented to SCTA on December 9, 2019

- Hours of Employment – Article 5
- Evaluation – Article 6
- Vacancies and Transfer – Article 8
- Compensation – Article 12
- Class Size – Article 17
- MOU Review

In presenting each of the above articles to SCTA for negotiations, the District requested that SCTA begin negotiations for a successor contract, offered dates for bargaining, and generally requested a response from SCTA on a specified date.

SCTA did not respond to the District’s letters of August 22, December 9, 2019. SCTA responded to the District’s August 2, 2019 letter requesting to commence negotiations by requesting that instead of beginning negotiations, the District agree to meetings with SCTA to

discuss their perceived “obstacles” that prevent the parties from beginning negotiations. (See August 8, 2019 letter from SCTA to District attached hereto as Exhibit B.) While SCTA referenced “obstacles” only a single “obstacle” was identified by SCTA—implementation of the retroactive payments based on the 2018-19 restructured salary schedule. Similarly, on August 7, 2019, SCTA distributed publicly and to the District a “proposal” that listed five items that the District must do prior to SCTA agreeing to commence negotiations. Those items included: filling vacancies, rescission of cuts to child development, rescission of cuts to classified staff, full implementation of the certificated salary schedule arbitration decision, and expedited arbitration on the language of Article 13 related to health benefits. (See August 7, 2019 Proposal of SCTA to District attached hereto as Exhibit B.) SCTA’s response to the District’s October 2, 2019 letter restated their position that bargaining on a successor contract “will proceed much more constructively when the fundamental issues regarding implementation of the last contract have been resolved.”

In response to the District’s most recent request to begin negotiations, sent to SCTA on December 20, 2019, SCTA responded on January 10, 2020 indicating that it believes “that because so many issues are tied to the outcome of the arbitration (and as we have noted several times to you in previous communications) negotiations will proceed more smoothly after that arbitration has concluded.” (See SCTA Letter dated January 10, 2020, attached hereto as Exhibit C.) SCTA then claims that the District and SCTA are “bargaining” certain issues, perhaps in an apparent attempt to demonstrate that SCTA is not refusing to bargain with the District. However, what SCTA fails to note is that the items that it purports are being “bargained” by the District and SCTA are items that the parties are attempting to resolve to avoid potential grievances as contemplated by Article 4 of the Collective Bargaining Agreement. To find that because the parties are working to resolve issues through its grievance process absolves SCTA from its obligation to begin bargaining on a successor contract would allow SCTA to bargain over the items it wants while ignoring any interests of the District. SCTA’s letter also indicates that it hopes to begin bargaining with the District over multi-tiered systems of support (“MTSS”) and restorative justice. The District hopes to begin bargaining over these items in successor contract negotiations and has made proposals to SCTA that directly relate to these topics under, among others, Article 11.

Finally, the January 10, 2020 letter from SCTA leaders repeats its criticism of District strategy, stating “[a]dditionally, your letter notes that your latest frivolous effort—asking PERB to declare we’re at impasse—was also a complete failure. It’s worth noting that PERB dismissed your request within hours of receipt, an indication of how completely ridiculous it was.” The District believes that this statement is indicative of SCTA leadership’s lack of respect for honoring the statutory process for negotiations and impasse and PERB’s role in carrying out the intent of the Educational Employment Relations Act. This District is not the first to file for impasse with PERB and seek the assistance of a state mediator when the exclusive representative has refused to come to the table and begin bargaining. It is imperative that PERB carefully consider the District’s request of this second impasse request.

SCTA’s perceived “obstacles” to beginning negotiations continue to change and are not actually obstacles.

SCTA leaders have repeatedly claimed that there are obstacles that prevent them from bargaining a successor contract. However, a review of SCTA’s correspondence and statements about these perceived obstacles demonstrates the inconsistencies in SCTA’s positions that belie an intent to delay bargaining, imposing conditions on bargaining, or both—which are unfair practices. Some examples of these obstacles and preconditions to bargaining stated by SCTA, and the inconsistency, are set forth below.

- December 13, 2018 letter from SCTA to the District in response to the District’s November 9, 2018 letter requesting to begin negotiations in December 2018:

“The Association agrees to submit its initial contract proposal no later than the first regular meeting of the Board of Education during the month of February the year the contract expires. Please be advised [SCTA] has every intention of abiding by Article 25. We look forward to scheduling dates after we submit our initial contract proposals as set forth above.”

Contrary to SCTA’s assurance that it would abide by Article 25, it did not do so. As noted above, Article 25.1 requires that the District and SCTA enter into negotiations of a successor agreement no later than 120 days prior to the expiration of this Agreement. SCTA did not abide by this provision of the contract nor its commitment in the December 13 letter to schedule negotiations dates because to date SCTA leaders have not accepted any of the dates the District has offered for negotiations.

- February 20, 2019 letter from SCTA to the District in response to District’s February 15 letter requesting to begin negotiations since SCTA had finally sunshined its proposals for negotiations:

“As set forth in the proposals that we sunshined at the school board meeting on February 7, 2019, we believe meaningful negotiations regarding a successor contract would be more likely to occur after the resolution of the several major issues from our current contract, including but not limited to, the implementation of the agreed-upon salary restructuring, and the addition of resources to the classroom via smaller class sizes and more support staff, as a result of potential changes from the health plans.”

The two issues highlighted in this letter by SCTA as needing to be resolved before negotiations can begin are not actually an impediment to beginning negotiations and are resolved (salary restructure) or in the process of being resolved through arbitration (health benefits).

- March 11, 2019 letter from SCTA to the District in response to District’s March 4 letter again asking SCTA to begin negotiations:

“...we believe that beginning negotiations on a successor agreement at this time would be premature while two major issues from our previous contract remain unresolved—the salary structure and implementation of our agreement to redirect health plan savings to achieve our mutually-agreed upon staffing goals...”

“For the reasons set forth above, we believe that successor contract negotiations would not be productive at this time, and assure you that SCTA will meet its legal obligations to bargain in good faith.

Again, SCTA claimed that resolution of the salary restructure and health benefits issue were necessary before negotiations could begin. SCTA also again assured the District that it would meet its legal obligation to bargain in good faith, which it still has not done.

- March 15, 2019 SCTA response to Unfair Practice Charge filed by the District against SCTA for SCTA’s failure to bargain in good faith:

“SCTA has simply pointed out the obvious, that successor contract bargaining is made exceedingly complicated by the District's refusal to resolve two issues outstanding from the Parties' last bargain, i.e., the certificated salary schedule structure and potential changes to the health plans.”

Here again SCTA claims that there are two issues that must be resolved before they will begin negotiations with the District—salary restructure and health benefits.

- March 23, 2019 email from SCTA Executive Director John Borsos to Superintendent Aguilar:

“We believe bargaining for a successor contract will be more productive after the district honors and fully implements the current contract and remedies its unlawful conduct.”

In this correspondence SCTA adds another precondition to beginning negotiations for a successor contract—“remedying [the District’s alleged] unlawful conduct” without describing what unlawful conduct must be remedied.

- April 12, 2019 letter from SCTA to the District following SCTA’s one-day strike:

“The strike yesterday was the clearest expression of a membership mandate that honoring the contract and obeying the law is the appropriate starting point for a renewed discussion. Toward that end, we are proposing once again to give the District the opportunity to fix its unlawful actions prior to SCTA representatives gathering to discuss next steps to get the District to honor the contract and obey the law.”

Here, SCTA expanded the preconditions to negotiations claiming that numerous unfair practices alleged to have been committed by the District must be resolved before negotiations could begin, notwithstanding that SCTA had not specified which alleged unfair practices justified its strike or how those alleged unfair practices prevented the parties from beginning bargaining.

- May 23, 2019 letter from SCTA to the District:

“Considering that wages, benefits, and staffing are perhaps the three biggest issues in any negotiations, resolving those issues before commencing negotiations on a successor agreement would be the logical process ...”

In this communication, SCTA adds yet another precondition to bargaining, namely staffing, and resolution of SCTA’s challenges to the District’s layoff process. SCTA filed a lawsuit challenging the District’s layoff, but has delayed the hearing on the matter before the Sacramento Superior Court until February 14, 2020.

- June 20, 2019 email from SCTA President David Fisher to Superintendent Aguilar:

“As we have informed you numerous times, we believe it would be far more productive to commence negotiations for our successor agreement after you have kept your word and honored the current agreement which you have unlawfully refused to abide by.”

While not clear what contract terms are believed to be at issue in this communication from SCTA leaders, to the extent it involved the salary restructure and health benefits, implementation of the salary restructure consistent with the arbitrator’s decision was being discussed between the District and SCTA as of this time and the health benefits issue was pending before the Public Employment Relations Board based on SCTA filing a claim against the District in that forum.

- August 8, 2019 letter from SCTA to the District stating five conditions that must be resolved before negotiations can begin (filling vacancies, rescission of cuts to child development, rescission of cuts to classified staff, full implementation of salary restructure, expedited arbitration on health plan). Many of the items listed by SCTA as conditions that must be resolved before negotiations can begin are outside of the scope of bargaining. SCTA’s action in conditioning bargaining on nonmandatory subjects of bargaining is an unfair practice.

“As we have informed you on numerous occasions ... we believe that negotiations for a successor contract will be better served once the District has implemented the terms and conditions of the current contract.”

- August 15, 2019 comments from SCTA 1st Vice President Nikki Milevsky at District Board meeting claiming that there remain issues that must be addressed before the District and SCTA can begin negotiations on a new contract. Specifically, reference to

an additional thirty (30) alleged unfair practices that must be resolved before negotiations can begin.

“In a recent communication from the Superintendent he offered several dates that decision makers in the District and we hope that includes the Superintendent and Board President Ryan are available for negotiations. We proposed meeting on August 22nd for the purposes of addressing our most immediate issues 1) retro pay 2) expedited arbitration regarding the health plan implementation 3) filling all the job vacancies so that our students have credentialed teachers the first day of school 4) rescinding the horrible cuts to child development 5) rescinding the cuts to classified staff and 6) addressing the more than 30 unfair labor practice charges that led to the strike on April 11th.”

- October 11, 2019 letter from SCTA President David Fisher, 1st Vice President Nikki Milevsky, and SCTA Executive Directive John Borsos to the District stating:

“[S]uccessor contract negotiations will proceed much more constructively when the fundamental issues regarding implementation of the last contract have been resolved.”

Thus, from November 2018 to present the “obstacles” or preconditions that SCTA claims must be met before negotiations can begin have expanded from resolution of the salary restructure arbitration and health benefits grievance, both of which have been or will be resolved through the grievance arbitration process; rescissions of certificated layoffs that were upheld by the Administrative Law Judge; rescissions of classified layoffs which is not a subject of negotiations for SCTA; and resolution of thirty or more unfair practices allegedly committed by the District without providing information to the District on what practices were included or how those prevent the parties from moving forward with negotiations. Throughout these communications SCTA conditioned negotiations on many other items, many of which are not negotiable.

The Public Employment Relations Board has filed a complaint against SCTA for failing to bargain in good faith.

In yet another attempt to move forward in bargaining for a 2019-20 successor contract, on March 11, 2019, the District filed an unfair practice charge against SCTA alleging that SCTA violated Government Code section 3543.6(c) by consistently failing and refusing to bargain in good faith regarding the 2019-20 successor collective bargaining agreement. On October 4, 2019, PERB determined the District’s Charge established a prima facie case for unfair practices by SCTA and filed a complaint against SCTA for, among other things, failing to bargain with the District in good faith. (See PERB Complaint dated October 4, 2019 attached hereto and incorporated herein as Exhibit D.)

On December 5, 2019, the District and SCTA met with a PERB representative for an informal conference to discuss the complaint against SCTA and possible resolution options. While the discussions during that meeting are confidential, the session did not result in resolution of the District's Charge against SCTA.

Fiscal experts recognize that the solutions to the District's budget deficit rest with negotiations.

The District strongly believes that beginning negotiations on a successor contract is critical to the work in moving the District forward and addressing our current \$27 million structural deficit. The importance of beginning negotiations was echoed by Sacramento County Superintendent David Gordon in his September 11, 2019 letter to the District, stating:

“Although there have been delays in this process, we see that the district has submitted an initial Negotiations Proposal to the Sacramento City Teachers’ Association. We again encourage the district and its bargaining units to immediately accelerate the negotiations process so that all possible savings to the budget can be realized.”

(See September 11, 2019 Letter attached hereto and incorporated herein as Exhibit E.) On December 10, 2019, the California State Auditor issued an audit report of the District's financial condition. (See Audit Report and associated documents attached hereto and incorporated herein as Exhibit F.) The Audit revealed that the District is facing a \$19.1 million shortfall in fiscal year 2021-22. (See Audit Summary.) The Audit Report makes a number of key findings about the District's budget situation and the risk that it may soon face insolvency. **The Audit report warns the District that it must “make more dramatic budget reductions to establish and maintain fiscal solvency.” (Audit Report at p. 29.) The Audit Report continues “Sacramento [City] Unified’s options for reducing ongoing expenses without engaging in labor negotiations are limited and unlikely to prove successful in addressing its precarious financial situation” and “[b]ecause it lacks other options, it is imperative that [the District] and its teachers union work together to agree to a solution, which they have not yet done.” (Audit Report at p. 30.)**

The Audit recommends that the District, by March 2020, adopt a detailed plan to resolve its fiscal crisis and that the District should “use the plan it develops as the basis for its discussions of potential solutions with its teacher union.” (Audit Report at p. 39.)

There is no denying that the District's budget situation is dire. That has been confirmed by the Sacramento County Office of Education, the Fiscal Crisis and Management Assistance Team (“FCMAT”), the Policy Analysis for California Education (“PACE”) report, and most recently the State Auditor. It is also undeniable that while some small amount of savings may be achieved through nonnegotiable actions by the District such as layoffs and program cuts, the significant savings rest in negotiated agreements. With SCTA delaying negotiations and/or refusing to begin bargaining for a successor contract, the District is left with few choices—unilaterally implement measures to address the District's budget, file for impasse, and/or file an unfair practice charge against SCTA. The District recognizes that unilateral implementation of its proposals prior to exhaustion of the fact-finding process is not a viable option. That leaves

two other paths for the District—impasse and unfair practice filing. The District has done the latter, and is going through the PERB process to seek an order from PERB for SCTA to come to the table and begin bargaining. However, that process takes considerable time and the District’s request for expedited consideration of the Charge was rejected by PERB. The remaining option for the District is to file the instant request for an impasse determination.

The District has demonstrated sufficient evidence under the Educational Employment Relations Act for PERB to make a determination that the District and SCTA are at an impasse in negotiations for a successor contract.

The Educational Employment Relations Act (“EERA”) and PERB have recognized the importance of labor negotiations in improving relationships between employers and employees. “[Th]e process of collective negotiations furthers the public interest by promoting the improvement of personnel management and employer-employee relations within the public school systems.” (Govt. Code section 3540; *San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 862. However, the EERA contains processes to be followed when collective bargaining proves unsuccessful. The factors for PERB to consider in determining whether parties are at an impasse in negotiations is set forth in California Code of Regulations, title 8, section 32793, subdivision (c), which provides:

In determining whether an impasse exists, the Board shall investigate and may consider the number and length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extent to which the parties have made and discussed counter-proposals to each other, the extent to which the parties have reached tentative agreement on issues during the negotiations, the extent to which unresolved issues remain, and other relevant data.

While the District acknowledges that it is seeking an impasse determination when the parties have not actually met at the table to begin negotiations, we believe the standard for PERB to make an impasse determination in this case is met. PERB has held that “good faith bargaining necessarily entails willingness to engage in ‘meaningful discussions’.” (*City of San Ramon* (2018) PERB Dec. No. 2571-M at p. 9, citing *County of Riverside* (2014) PERB Dec. No 2360-M at p. 14 (“*Riverside*”).) PERB has further recognized that in making an impasse determination certain factors may increase in importance over others, such as in *Mt. San Antonio College Faculty Association* (1981) PERB Order No. Ad-124 (“*Mt. San Antonio*”), where there was no evidence of any meaningful discussion or exchange of proposals. In such a case, the number and length of meetings and the time period over which they occurred ‘are not as useful in a determination of impasse as those factors, noted above [no meaningful discussions], which evidence a meaningful effort to reach agreement.’” (*Riverside, supra*, PERB Dec. No 2360-M at p. 14, citing *Mt. San Antonio, supra*, PERB Order No. Ad-124 at p. 5.)

PERB has also recognized that at times, factors beyond those listed in section 32793, subdivision (c), merit consideration. “In addition to bargaining history, evidence of good faith bargaining, and the fluidity of positions, the Board may consider additional factors, such as the nature and

importance of the outstanding issues and the extent of difference or opposition.” (*Riverside, supra*, PERB Dec. No 2360-M at p. 14, citing *Sierra Publishing Co. d/b/a The Sacramento Union* (1988) 291 NLRB 552, enforced, 888 F. 2d 1384 (9th Cir. 1989).)

Here the District has attempted for over fourteen (14) months to begin bargaining with SCTA and SCTA has either refused, not responded to the District’s requests, or conditioned bargaining on other actions. The District has presented all of its negotiations proposals to SCTA and has not received any counter proposals from SCTA. If the parties were sitting at a negotiations table for fourteen months with one side presenting proposals and the other side not responding we believe PERB would certify the parties to impasse upon receipt of a request from one of the parties.

SCTA should not be allowed to continue to delay bargaining for a successor contract, which in turn prevents the District from moving forward to address its budget shortfall and improve educational opportunities for its students. The District continues to believe that together, with SCTA and our other labor partners, and through the collective bargaining process, solutions to its budget problems that are acceptable for the District and our employees will be identified and agreed to, thereby allowing the District and its employees to continue their shared goal of enhancing educational opportunities for all students. For the reasons outlined above, the District respectfully requests that PERB determine that the District is at an impasse with SCTA and appoint a mediator to work with the District and SCTA.